IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11869 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

AJAY ALIAS VIKKY ALIAS DHARMENDRA KAILASHNATH PANDE - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

==========

Appearance :

MS SUBHADRA G PATEL for Petitioner(s) : 1,
MR ND GOHIL AGP for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 2,
DS AFF.NOT FILED (R) for Respondent(s) : 3,

==========

CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 02/08/2006

ORAL JUDGMENT

By filing the present petition, the petitioner-

detenu has challenged his detention order dated 27-11-2005 by which he is detained as a 'dangerous person' under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as PASA Act].

In the grounds of detention, there is a reference to 3 criminal cases pending against the detenu for offences punishable under sections 379 and 114 of the Indian Penal Code. It is alleged that the detenu has committed theft of certain parts of auto-rickshaw. It is also alleged that the petitioner is in judicial custody and he is likely to be released on bail, if he prefers bail application before the competent Court. The detaining authority has found that the activities of the detenu are such that it will prejudicially affect public order, and, therefore has detained the petitioner as a 'dangerous person'.

Learned advocate for the petitioner has submitted that at the relevant time the petitioner was already in judicial custody yet he has been detained under the provisions of PASA. This factual aspect as such is not in dispute. He has placed reliance on a decision rendered by the

Apex Court in the case of **T.V.SRAVANAN ALIAS A.R.PRASANA vs. STATE THROUGH SECRETARY AND ANOTHER,** reported in **(2006) 2 Supreme Court Cases 664**, more particularly para 14 wherein the Apex Court has held as under :

> "We are satisfied that for the same reason the order of detention cannot be upheld in this case. The bail applications moved by the appellant had been rejected by the courts and there was no material whatsoever to apprehend that he was likely to move a bail application or that there was imminent possibility of the prayer for bail being granted. The "imminent possibility" of the appellant coming out on bail is merely the ipse dixit of the detaining authority unsupported by any material whatsoever. There was no cogent material before the detaining authority on the basis of which the detaining authority could be satisfied that the detenu was likely to be released on bail. The inference has to be drawn from the available material on record. In the absence of such material on record the mere ipse dixit of the detaining authority is not sufficient to sustain the order of detention. There was, therefore, no sufficient compliance with the requirements as laid down by this Court. These are the reasons for which while allowing the appeal we directed the release of the appellant by order dated 13-12-2005."

Learned advocate for the petitioner has further submitted that so far as pending criminal cases are concerned, all these cases are under the provisions of the Indian Penal Code and they are individual cases. He further submitted that simply because the

cases are registered against the petitioner, it cannot be said that the petitioner has violated public order and some more material is required to justify the stand taken by the detaining authority that the activity of the petitioner is prejudicial to public order. Learned advocate for the petitioner has relied upon the decision of the Division Bench of this Court in **A.J.Solanki V. Police Commissioner, Surat** reported in 2000 (1) GLH 393. In paragraph 22 of the said judgement, Division Bench of this Court has held as under :

> “So far as the cases against the detenu are concerned, they have already been registered. They were against persons mentioned therein which is stated in the grounds of detention by the detaining authority. Regarding two statements, having taken into account the law laid down by the Supreme Court in Ram Manohar Lohia vs. State of Bihar, AIR 1966 SC 740 and reiterated from time to time including the decisions referred to by us hereinabove, the case falls under the maintenance of "law and order" and not "public order". The subjective satisfaction arrived at by the detaining authority, therefore, cannot be said to be legal, valid and in accordance with law. Since in the facts and circumstances, an order of detention could have been passed by the detaining authority for maintenance of "public order", the order deserves to be quashed and is hereby set aside. The detenu is ordered to be set at liberty forthwith unless required in any other case. Appeal is accordingly allowed. No order as to costs.”

Learned Assistant Government Pleader is not in a position to point out any documents as to on what basis and material the detaining authority has come to the aforesaid conclusion.

It is required to be noted that it is not mentioned in the grounds of detention that on what basis the detaining authority has come to the conclusion that the petitioner is likely to be released on bail by the competent Court, if the petitioner prefers bail application before the competent Court.

Considering the aforesaid aspect of the matter and considering the fact that there is nothing to show that the activities of the petitioner is likely to prejudicially affect public order. There is no credible material from which it can be said that the activities of the petitioner is prejudicial to public order. The cases are under the provisions of the Indian Penal Code and they are individual cases. At the most it can be said that the activities of the petitioner is in breach of law and order, and not public order. The petition is required to be allowed as from the available records it cannot be said that

the activities of the petitioner is against public order.

In the result, the petition is allowed. The order of detention passed against the detenu dated 27-11-2005 is quashed and set aside. The detenu Ajay Alias Vikky Alias Dharmendra Kailashnath Pande is ordered to be released forthwith unless his presence is required in connection with any other case. Rule is made absolute with no order as to costs.

(P.B.MAJMUDAR,J.)

*mithabhai